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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1227

HOUSING AUTHORITY OF THE CITY OF DURHAM, NORTH CAROLINA; and C. S. GRAHAM, CARL R. HARRIS, R. W. MIDGETTE, W. E. SHERMAN, JR., CHARLES A. ROACH, and ARTIS PLUMMER, Individually and in Their Official Capacities as Members of the Housing Authority of the City of Durham, North Carolina, *Petitioners*,

v.

LILLIAN CAULDER, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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v.

LILLIAN CAULDEN, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners, Housing Authority of the City of Durham, North Carolina, and the individual members thereof, respectfully pray that a writ of certiorari issue to the United States Court of Appeals for the Fourth Circuit to review the judgment of the Court of Appeals entered in the above case on November 6, 1970.

OPINIONS BELOW

The opinion of the Court of Appeals and the dissenting opinion appear in Appendix "A", *infra*, Pages 1a-16a. The opinion of the District Court appears in Appendix "B", *infra*, Pages 17a-23a.

JURISDICTION

The Judgment of the Court of Appeals was entered on November 6, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Was the Federal District Court required to enjoin the eviction action brought by the Housing Authority in the State Court and decide the issue alleged by the Respondent that she had been denied constitutional rights by the administrative practices of Petitioner, Housing Authority?

2. Did the District Court have power to enjoin the action in the State Court within the limitations of 28 U.S.C. § 2283?

3. Was the Respondent, a party to a written lease with the Housing Authority, denied rights guaranteed by the due process clause of the Fourteenth Amendment of the Constitution of the United States by the Housing Authority's enforcement of the terms of that lease in this case?

4. Was the refusal of the Housing Authority to disclose the names of complaining witnesses to counsel for the Respondent and to fail to provide opportunity to counsel for the Respondent to cross-examine such complaining neighbors a violation of the Respondent-tenant's Fourteenth Amendment rights when she had

been told the reasons for her eviction and given an opportunity to present her case to the Authority in compliance with all existing HUD regulations?

5. Was the Court of Appeals correct in reversing the Judgment of the District Court in dismissing this action?

6. Can the Court of Appeals under the guise of due process impose upon the Housing Authority procedural requirements not permitted by the State law, which governs the actions of the Authority, as a prerequisite to the institution of eviction proceedings in the State Court?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions involve the Fourteenth Amendment of the United States Constitution.

This Petition also involves sections of the United States Housing Act, as amended, 42 U.S.C. § 1401, *et seq.*, and 28 U.S.C. § 1254(1), § 1343(3), § 2201, § 2202, and § 2283. The Petition also involves a portion of the North Carolina Housing Authorities Law, Chapter 157 of the General Statutes of North Carolina. These provisions are set forth in Appendix "C", *infra*, Pages 24a-33a.

STATEMENT

The Respondent, in the Complaint filed in the District Court, alleges that she occupies an apartment owned by Petitioner, Housing Authority, under a month-to-month lease and that the Housing Authority terminated her lease for alleged breach of contract on her part. On or about May 6, 1969, the Authority instituted an action in the General Court of Justice in

Durham County, North Carolina, for summary ejectment against the Respondent, Caulder. On May 14, 1969, the Federal District Court entered a temporary restraining order, restraining and enjoining the Authority from evicting, attempting to evict, or proceeding to evict the Respondent, Caulder.

On or about October 7, 1963, the Respondent, Caulder, entered into a month-to-month lease with the Housing Authority. On February 19, 1969, she attended a conference with the Project Manager of the Housing Authority at which time complaints regarding Mrs. Caulder's children's conduct and morals were discussed. On February 28, 1969, the Housing Authority wrote Mrs. Caulder, stating that her lease was being terminated and that "this termination is for cause, and you have been informed as to these causes. I refer you specifically to Section I-E of your Dwelling Lease." On March 18, 1969, an administrative hearing was held at the request of Respondent, Caulder, at which she was represented by counsel and at which the Housing Authority representative discussed with Mrs. Caulder and her counsel the contents of several affidavits received from tenants in the project but refused to give the Respondent, Caulder, the names of these neighbors. Thereafter, on March 27, 1969, a hearing was held before the Commissioners of the Housing Authority at which time the Respondent, Caulder, was represented by counsel and was informed that she would not be given the names of the neighbors who had filed affidavits with the Housing Authority and that the Commissioners would not undertake a hearing which would permit the confrontation of these or other individuals as witnesses and cross-examination of them. The Respondent, Caulder, then, through her

counsel, submitted affidavits of her family's good character. After these hearings, on March 28, 1969, the Housing Authority notified the Respondent, Caulder, that her lease would be terminated as of April 30, 1969—this action complying with the notice provisions of the lease. On May 1, 1969, the Respondent, Caulder, filed this action in the Federal District Court. In effect at the time of these actions was a Circular issued by the Department of Housing and Urban Development (HUD), requiring that before a tenant can be evicted he must be given notice of the reasons for the eviction and an opportunity to reply to those reasons. (See Appendix "D," *infra*, Pages 34a-35a.)

At Pre-Trial Conference counsel for both parties argued the matter before the District Judge, and affidavits were submitted by the respective parties; and on September 29, 1969, the District Judge rendered an opinion which granted the Authority's motion to dismiss the action. Thereafter the Respondent took an appeal to the Fourth Circuit Court of Appeals which rendered an opinion and entered Judgment on November 6, 1970, which reversed the Judgment of the District Court and returned the case for further proceedings, continuing the injunction granted pending appeal until final disposition by the District Court.

REASONS FOR GRANTING THE WRIT

I.

The Question of How Far and to What Extent the Administrative Procedures of Local Housing Authorities Are Restricted by the Fourteenth Amendment and the Corollary Question of the Role the Federal District Courts Are Required To Play in the Administration of Local Housing Authorities as It Pertains to the Management by Local Housing Authorities of Their Properties Are of National Importance.

This is a question of immediate and pressing national concern. Here, the Respondent, a tenant in a housing project owned by a State-incorporated Housing Authority, bases her case solely on the assertion that the Federal Constitution, and, specifically, the "due process" clause thereof, renders invalid the Authority's decision to evict her and that she is entitled to have a Federal District Court adjudicate the issue before an eviction case is heard in the State Court. The substantive and procedural questions affect Housing Authorities, their tenants, State Courts, and Federal Courts across the land, as well as the operation of the Department of Housing and Urban Development (HUD).

The position taken by the two Judges of the three-Judge panel of the Circuit Court in this case (in the procedural mandates they find obligatory under "due process") goes far beyond the requirements of Federal statute, HUD regulations, State statutes, and local policies. Before giving the State Courts the opportunity to construe the lease between the Respondent-tenant and the Housing Authority, the Annual Contributions Contract between the Authority and HUD, the pertinent State statutes, the Federal Housing Act, and HUD regulations—all of which might be relevant

—the two-Judge majority established a constitutional rule to be administered by the Federal District Court; and they did this in the absence of any showing or even hint that this tenant, through her able counsel, had asserted any defense in the State Court action, although she was told the reasons for her eviction.[1] As was said in *Thorpe*, " . . . we have no reason to believe that once petitioner is told the reasons for her eviction she cannot effectively challenge their legal sufficiency in whatever eviction proceedings may be brought in the North Carolina courts." *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268 (1969).

In recent years it has become the fashion for those representing tenants and potential tenants of Local Housing Authorities to focus their efforts on winning what they allege to be the procedural protections of due process.[2] This is and has been a relatively vague and ill-defined issue, and the process has resulted in a flood of cases pouring into the Federal Court system.

There are more than two thousand public housing authorities throughout the country; and, at least since the decision in *Thorpe*, they presumably have been following the existing HUD directives concerning their relationship with their tenants. If, in addition to this, there is to be superimposed upon them a patchwork of Federal Court opinions allegedly arising under Fourteenth Amendment considerations, their administrative problems exceed reasonable limits. If the lower

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[1] After two hearings and the consideration of affidavits, the District Judge found as a fact that she was told the reasons but was refused the names of the complaining neighbors.

[2] See Lempert and Ikeda, "Evictions from Public Housing: Effects of Independent Review", American Sociological Review, Volume 35, No. 5, Page 852 (October, 1970).

Federal Courts are allowed to proceed unguided, there is no way a Local Authority can, with any assurance, begin a proceeding against an undesirable tenant—a proceeding frequently quite necessary to preserve the good order of the neighborhood and to render more tolerable the lot of other inhabitants.

The Federal District Courts, of course, do not normally deal with eviction matters since their jurisdiction does not encompass this; and Local Housing Authorities would, therefore, never be in Federal Court as Plaintiffs, asking for eviction of their tenants. The way the Federal District Courts get into the act by the use of injunctive devices adds to the administrative and legal confusion—a result which was sought to be avoided by the enactment of 28 U.S.C. § 2283. As Justice Black said in *Atlantic Coast Line Railroad Company* v. *Brotherhood of Locomotive Engineers, et al*, 398 U.S. 281 (1970): " . . . a federal court does not have inherent power to ignore the limitations of § 2283 and to enjoin state court proceedings merely because those proceedings interfere with the protected federal right or invade an area preempted by federal law, even when the interference is unmistakenly clear. This rule applies regardless of whether the federal court itself has jurisdiction over the controversy. . . . Second, if the District Court does have jurisdiction, it is not enough that the requested injunction is related to that jurisdiction, but it must be *'necessary in aid of'* that jurisdiction. . . . [L]ower federal courts possess no power whatever to sit in direct review of state court decisions. . . . "

In this case the result reached by the District Court was correct in that it was following the proper policies, in accord with the statutes regulating the procedures of

the Federal Courts, to abstain, at least at this point, the Respondent not having been evicted and the State Courts not having acted. By using the injunctive device Federal District Courts across the land can virtually break down the administrative procedures of Housing Authorities at a time of ever-increasing concern about the quality of neighborhood life in public housing projects. A recent expression of this is contained in the explanation of Section 213 of the Housing and Urban Development Act of 1969, which was adopted by the Senate-House Conference Committee:

> "The committee is deeply concerned over cases of lax management in many public housing projects which have led to high operating costs, deterioration of property, and an intolerable environment for the families who live there. Among the reasons given to the committee to demonstrate the need for additional subsidies for existing housing projects, a sharp increase in vandalism was frequently mentioned together with a sharp increase in crime which has driven many occupants out of these projects. Much of the blame for these conditions lies with project managers and local government officials. Too frequently individual projects have filled up with problem families to the exclusion of others with resulting vacancy rates which have caused local budget deficits."

The position taken by the Circuit Court below could easily be a giant step forward toward the "administrative morass" which Chief Justice Burger mentions in his dissenting opinion in *Wheeler* v. *Montgomery*, 397 U.S. 280, 284. Federal District Courts peering into the deliberations of the Commissioners of Housing Authorities surely might find decision after decision that affect the "property" of the tenants whether they be related to policies for making repair,

rent schedules, ground maintenance, or any multitude of matters and could say that each tenant affected thereby had a "due process" right to be heard before such decision was made.

II.

The Conflict Between the Decision and Opinion of the Circuit Court in This Case and the Decisions of This Court as to the Applicability of Due Process and the Role of the Lower Federal Courts in Administering These Constitutional Requirements Necessitates Resolution of the Issues by This Court.

The District Court was clearly in accord with the holding of the Supreme Court of the United States in *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, in holding that the Respondent's action here, attacking the procedures of the Housing Authority in refusing to renew her lease, was at least premature. In *Thorpe* it was clearly asserted that what might transpire in the State Court eviction proceedings would at least have important relevancy to any due process issue sought to be raised by the tenant.

It is quite true that this position was taken against the background of the two State Court decisions in the *Thorpe* case (267 N.C. 431 and 271 N.C. 468) which held that no constitutional rights of the tenant had been violated. The United States Supreme Court reversed these decisions only on the issue of the retroactivity of the HUD Circular.

In the State eviction action the Housing Authority would have to prove the lease, termination of the lease, and continued occupancy thereafter. The lease is admitted, and the continued occupancy is admitted.

In compliance with the provisions of the lease, the tenant was given written notice that it would not be renewed. The question in the State action, then, would be whether something more had to be done to lawfully terminate.

Thorpe required that something more be done by the Housing Authority—to-wit, compliance with HUD Circular of February 7, 1967—and this was done here. It did not require that more than that be done even though the State Courts had made a clear holding that there was no constitutional impediment to eviction upon the facts in that case.

The Respondent here contends that something more than that should be required for lawful termination; that these requirements are constitutional in nature and, therefore, should be imposed by the Federal Courts in advance of State Court action. This *Thorpe* refused to do. The Supreme Court also refused to do this in *Stewart* v. *Chicago Housing Authority*, 393 U.S. 482.

The opinion in *Thorpe* did not say that constitutional issues had become irrelevant; it merely said the Supreme Court would not consider them even though the State Court had already decided them adversely to the tenant. Chief Justice Warren, for the Court, said: ". . . we have no reason to believe that once petitioner is told the reasons for her eviction she cannot effectively challenge their legal sufficiency in whatever eviction proceedings may be brought in the North Carolina courts." In a note the Court further said: "These same considerations lead us to conclude that it would be equally premature for us to reach a decision on petitioner's contention that it would

violate due process for the authority to evict her arbitrarily. That issue can be more appropriately considered if petitioner is in fact evicted arbitrarily."

Respondent in the case at bar is asking the District Court to adopt procedures specifically rejected in *Thorpe*. As Chief Justice Warren, again speaking for the Court, said: "Thus, with the case in this posture, a decision on petitioner's constitutional claims would be premature."

The role of the State Courts in this connection would be (a) to decide whether constitutional issues exist, and (b) to provide a forum for cross-examination and confrontation of witnesses if that be necessary to satisfy due process. Certainly, State Court action in this case, as in *Thorpe*, comes after the administrative action of the Housing Authority. But the totality of State action against tenant must include the necessary part played by the State Courts in eviction.

Twice the Supreme Court returned the case in *Thorpe* for State Court action. If this was not for a preliminary State Court review of constitutional questions, it amounted to a decision that these issues were not present. *Thorpe* said that constitutional questions might arise presumably in connection with the hearings in the eviction proceedings in the State Courts.

The role of the State Courts was also discussed by various Justices in the course of the *Thorpe* case hearings and has been considered in other cases as well.

Justice White, in his dissenting opinion in the first hearing of *Thorpe* v. *Housing Authority*, 386 U.S. 670 (1967), stated: "Petitioner was afforded a full

due process hearing in the lower court and had the opportunity to explore fully why she was evicted." Justice Douglas, in his concurring opinion, stated: "Moreover, is there a constitutional requirement for an administrative hearing where, as here, the tenant can have a full judicial hearing when the authority attempts to evict him through judicial process? Petitioner has had a hearing in the state courts."

Justice Brandeis, delivering the opinion of the Court in *Bourjois* v. *Chapman*, 301 U.S. 183, 189, 57 S. Ct. 691, 81 L. Ed. 1027 (1937), made the same point: "And neither Constitution (Constitution of the State of Maine or the Constitution of the United States) requires that there must be a hearing of the applicant before the Board may exercise a judgment under the circumstances and of the character here involved. The requirements of due process of law are amply safeguarded by Section 2 of the statute, which provides: 'From the refusal of said department to issue a certificate of registration for any cosmetic preparation, appeal shall lie to the Superior Court of the County of Kennebec or any other County in the State from which the same was offered for registration.'"

After the decision in *Thorpe* it can no longer be questioned that HUD Circular of February 7, 1967 (see Appendix "D" to this Petition), is binding upon the Housing Authority and, presumably, upon the tenants and becomes a part of the lease. This Court held that the Circular was not unconstitutional on its face. It was designed to describe and formulate the procedures of the Housing Authority as they pertain to its notice and conferences with the tenants prior to instituting eviction proceedings. The Supreme Court described the scope and meaning of the

HUD Circular. It agreed that the Circular clearly did not say that a Housing Authority could not terminate a lease at the end of a term without cause as provided in the lease. This Court said: "The circular imposes only one requirement: that the authority comply with a very simple notification procedure before evicting its tenants." (393 U.S. at Page 278).

In *Cafeteria and Restaurant Workers Union* v. *McElroy*, 367 U.S. 886, 895 (1961), the Court said: "Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." Here the Housing Authority has no "governmental" powers in connection with terminating leases and evicting tenants. This landlord is in no better position than an ordinary landlord with no governmental powers, and the tenant is in at least as good a position as an ordinary tenant. The statutes creating the program of low-rent housing contemplated that occupancy of the dwelling units be regulated by using legal devices and concepts normally involved in and arising from the landlord-tenant relationship. So, in the case at bar the private interest of the Respondent, Caulder, was embodied in the provisions of a written lease; and she possessed no right of occupancy other than that provided by this lease. There is no Federal, administrative, statutory or constitutional requirement that the term of this lease be for the duration of the lifetime of the tenant or for the duration of her eligibility—there being no guarantee that all members of the eligible class shall have low-rent housing in a Housing Authority project.

III.

The Conflict Between the Decision of the Court Below in This Case and the Decisions of Other United States Circuit Courts of Appeal and the Appellate Courts of Last Resort in Various States Necessitates Resolution of the Issue by This Court.

The notion that a landlord-tenant relationship involving a lease, limiting and defining whatever property right the tenant has, also involves some Fourteenth Amendment requirements not contained in the contract when the landlord is a Local Housing Authority is of recent vintage. The Courts in New York seem to have started in that direction as early as 1955, and the idea surfaced in bulk in the recent case of *Escalera* v. *New York City Housing Authority*, 425 F. 2d 853 (C.C.A. 2, April 29, 1970)—a case similar in many respects to the one at bar, although a class action, arising in the context of the special procedural policies in force in New York.

In support of Petitioners' position here are *Walton* v. *City of Phoenix*, 69 Ariz. 26, 208 P. 2d 309 (1949); *Brand* v. *Chicago Housing Authority*, 120 F. 2d 786 (C.C.A. 7, 1941); *Columbus Metropolitan Housing Authority* v. *Simpson*, 85 Ohio App. 73, 85 N.E. 2d 560 (1949); *Chicago Housing Authority* v. *Ivory*, 341 Ill. App. 282, 93 N.E. 2d 386 (1950); *Housing Authority* v. *Thorpe*, 271 N.C. 468, 157 S.E. 2d 147 (1967); *Williams* v. *Housing Authority of Atlanta*, 223 Ga. 407, 155 S.E. 2d 923 (1967); *Faris* v. *United States*, 192 F. 2d 53 (C.C.A. 10, 1951); and *United States* v. *Blumenthal*, 315 F. 2d 351 (C.C.A. 3, 1963)—all applied the State law of landlord and tenant, defining the rights of the tenant contained in the lease and in laws applicable to tenants.

To like effect was the recent case of *Chicago Housing Authority* v. *Stewart*, 43 Ill. 2d 96, 251 N.E. 2d 185

(1969), cert. denied, 397 U.S. 1000 (1970), where Justice Klingbiel, speaking for the Court, said: "It is urged that due process of law precludes an 'arbitrary' termination of tenancies such as this. We cannot accept such a contention. It was a condition of granting to defendant these benefits at public expense, that the occupancy be on a month-to-month basis, and such are the terms upon which the defendant took possession. There is nothing arbitrary about requiring a public housing tenant to vacate at the expiration of his lease, nor does it deny due process of law or any other constitutional right that reasons for doing so are not specified."

In *Randell* v. *Newark Housing Authority*, 384 F. 2d 151 (C.C.A. 3, 1967), cert. denied, *sub nom. Avent* v. *Newark Housing Authority*, 393 U.S. 870 (1968), the due process issues sought to be raised by the tenant were, at the minimum, left to the State Courts for first consideration, the Court saying that "the circumstances of this controversy make it particularly appropriate for state courts to act as the initial forum, both because of the federal legislative pattern itself gives primary responsibility to the states for establishment and administration of any low-rent housing project, 42 U.S.C. § 1401, and because the particular problems of administering low-rent housing evictions are closely tied to various landlord and tenant actions before the courts of the State of New Jersey."

Moreover, there is an apparent conflict in the Fourth Circuit itself. In the case at bar the majority of the Circuit Court panel conceded that what happens in the State Court does make a difference, and in *Johnson* v. *Tamsberg*, 430 F. 2d 1125 (C.C.A. 4, 1970), the Court, without dissent, so held. To distinguish the case at

bar from *Johnson*, the majority invented a set of facts —*i.e.*, that if reason for the Authority's decision to evict was placed in issue by the tenant, it would be held irrelevant by the State Court. The distinction, they say, is that in *Johnson* the Authority "did not seek to obtain summary ejection on the basis of the exercise of an unlimited discretion to terminate the tenancy but rather undertook to prove specific acts constituting a breach of the lease and justifying termination." This invention of facts and concurrent speculation about the course of trial in the State Court is not supported by anything in the record of the case at bar nor in the findings of the District Judge.

It is submitted that the result reached in *Johnson* is in accord with the decision and opinion of this Court in *Thorpe* and that the result reached by the majority of the Circuit Court panel in the case at bar is not.

IV.

The Court Below Misconstrued the Opinion of This Court in GOLDBERG v. KELLY and Erroneously Applied It to the Case at Bar.

Although the majority of the Circuit Court panel cited *Goldberg v. Kelly*, 397 U.S. 254 (1970), in support of its position, the principles advanced and discussed in the *Goldberg* opinion were clearly not followed. (a) In *Goldberg* the "benefits are a matter of statutory entitlement for persons qualified to receive them"; but in this case, they are not. Eligibility is a matter of policy decided by the Local Authority within guidelines supplied by HUD, and right of occupancy is created and limited by a written lease. (b) In *Goldberg* "the constitutional issue to be decided . . . is the narrow one whether the due process

clause requires that the recipient be afforded an evidentiary hearing *before* the termination of benefits"; but in this case, since enforcement of the lease required Court action, the benefits had not been terminated when the Federal Court intervened to halt the proceedings.[3] (c) In *Goldberg* the governmental interest was in conserving fiscal and administrative resources; but here, in refusing to divulge the names of complaining neighbors at the administrative stage, the interest of the Authority was to avoid intensifying neighborhood strife—all to the end that its housing projects might be better places in which to live. (d) In *Goldberg* a "critical factor" was "that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits"; but in the case at bar where the tenant pays rent for housing, whether she is in the Authority's project or not, there is no evidence that the Respondent, Caulder, would be deprived of a suitable place to live—the District Court finding: "It does not follow that because she lives in housing designed to replace slum housing she must return to slum housing if she is evicted."

CONCLUSION

For the reasons stated above, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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[3] This Court said in *Goldberg*: "Due process does not, of course, require two hearings. If, for example, a state simply wishes to continue benefits until after a 'fair' hearing, there will be no need for a preliminary hearing." *Goldberg* v. *Kelly*, 397 U.S. 254.